

# HOUSE BILL 1103

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By: **Delegates Rosenberg and Feldman**

Introduced and read first time: February 17, 2010

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Storage and Display of Tobacco–Related Products**

3 FOR the purpose of prohibiting certain persons from storing or displaying a  
4 tobacco–related product unless certain conditions are met; providing for civil  
5 penalties for certain violations of this Act; authorizing a county health officer, or  
6 the county health officer’s designee, to issue a civil citation to a person who  
7 violates a certain provision of law; requiring the civil citation to include certain  
8 information; requiring the county health officer to retain a copy of the civil  
9 citation; authorizing a person who receives a civil citation under a certain  
10 provision of law to elect to stand trial by filing a certain notice with the county  
11 health officer within a certain time period; requiring the county health officer to  
12 forward a certain notice to the District Court having venue; requiring the  
13 District Court to schedule the case for trial and notify the defendant;  
14 authorizing the county commissioners for the county where the violation of a  
15 certain provision of law occurred to authorize the State’s Attorney to prosecute a  
16 certain civil infraction; requiring a certain violation to be prosecuted in the  
17 same manner and to the same extent as a municipal infraction under certain  
18 provisions of law; requiring a person found by the District Court to have  
19 violated a certain provision of law to be liable for the costs of the court  
20 proceedings; requiring the penalties and forfeitures collected by the District  
21 Court for the violation of a certain provision of law to be remitted to the county  
22 where the violation occurred; providing for the application of this Act; providing  
23 that this Act does not preempt any county or municipal law or ordinance more  
24 stringent than this Act; declaring the intent of the General Assembly; defining a  
25 certain term; and generally relating to the storage and display of  
26 tobacco–related products.

27 BY repealing

28 Article 24 – Political Subdivisions – Miscellaneous Provisions

29 Section 15–101 through 15–102.1, 15–103, and 15–104 and the title “Title 15.

30 Tobacco Product Sales”

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2005 Replacement Volume and 2009 Supplement)

3 BY repealing  
4 Article – Business Regulation  
5 Section 16–3A–01 through 16–3A–03 and the subtitle “Subtitle 3A. Tobacco  
6 Product Vending Machines”  
7 Annotated Code of Maryland  
8 (2004 Replacement Volume and 2009 Supplement)

9 BY adding to  
10 Article – Business Regulation  
11 Section 16–3A–01 through 16–3A–05 to be under the new subtitle “Subtitle 3A.  
12 Storage and Display of Tobacco–Related Products”  
13 Annotated Code of Maryland  
14 (2004 Replacement Volume and 2009 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That Section(s) 15–101 through 15–102.1, 15–103, and 15–104 and the  
17 title “Title 15. Tobacco Product Sales” of Article 24 – Political Subdivisions –  
18 Miscellaneous Provisions of the Annotated Code of Maryland be repealed.

19 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 16–3A–01  
20 through 16–3A–03 and the subtitle “Subtitle 3A. Tobacco Product Vending Machines”  
21 of Article – Business Regulation of the Annotated Code of Maryland be repealed.

22 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
23 read as follows:

24 **Article – Business Regulation**

25 **SUBTITLE 3A. STORAGE AND DISPLAY OF TOBACCO–RELATED PRODUCTS.**

26 **16–3A–01.**

27 **IN THIS SUBTITLE, “TOBACCO–RELATED PRODUCT” MEANS A SUBSTANCE**  
28 **CONTAINING TOBACCO, INCLUDING:**

- 29 **(1) A CIGARETTE;**  
30 **(2) A CIGAR;**  
31 **(3) SMOKING TOBACCO;**  
32 **(4) SNUFF;**

1           **(5) SMOKELESS TOBACCO; AND**

2           **(6) A CANDY-LIKE PRODUCT THAT CONTAINS TOBACCO.**

3 **16-3A-02.**

4           **THIS SUBTITLE DOES NOT APPLY TO:**

5           **(1) TOBACCO-RELATED PRODUCT SELF-SERVICE DISPLAYS**  
6 **LOCATED IN AN ESTABLISHMENT THAT ENGAGES PRIMARILY IN THE SALE OF**  
7 **TOBACCO-RELATED PRODUCTS OTHER THAN CIGARETTES AND WHERE THE**  
8 **OWNER ENSURES THAT NO PERSON UNDER THE AGE OF 18 YEARS IS PRESENT**  
9 **OR PERMITTED TO ENTER AT ANY TIME; OR**

10           **(2) TOBACCO-RELATED PRODUCT VENDING MACHINES LOCATED**  
11 **IN AN ESTABLISHMENT WHERE THE OWNER ENSURES THAT NO PERSON UNDER**  
12 **THE AGE OF 18 YEARS IS PRESENT OR PERMITTED TO ENTER AT ANY TIME.**

13 **16-3A-03.**

14           **A PERSON WHO OWNS OR OPERATES A BUSINESS THAT ENGAGES IN THE**  
15 **RETAIL SALE OF A TOBACCO-RELATED PRODUCT MAY NOT STORE OR DISPLAY A**  
16 **TOBACCO-RELATED PRODUCT UNLESS THE TOBACCO-RELATED PRODUCT:**

17           **(1) IS NOT IMMEDIATELY ACCESSIBLE TO CUSTOMERS; AND**

18           **(2) IS ACCESSIBLE ONLY TO THE OWNER OR OPERATOR OF THE**  
19 **BUSINESS OR AN AGENT OR EMPLOYEE OF THE OWNER OR OPERATOR.**

20 **16-3A-04.**

21           **(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS**  
22 **SUBJECT TO A CIVIL PENALTY OF:**

23           **(1) \$300 FOR THE FIRST VIOLATION; AND**

24           **(2) \$500 FOR ANY SUBSEQUENT VIOLATION THAT OCCURS WITHIN**  
25 **24 MONTHS OF THE PREVIOUS VIOLATION.**

26           **(B) (1) A COUNTY HEALTH OFFICER OR A DESIGNEE OF A COUNTY**  
27 **HEALTH OFFICER MAY ISSUE A CIVIL CITATION TO A PERSON WHO VIOLATES**  
28 **ANY PROVISION OF THIS SUBTITLE.**

29           **(2) A CITATION ISSUED UNDER THIS SUBTITLE SHALL INCLUDE:**

- 1                   **(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;**
- 2                   **(II) THE NATURE OF THE VIOLATION;**
- 3                   **(III) THE LOCATION AND TIME OF THE VIOLATION;**
- 4                   **(IV) THE AMOUNT OF THE CIVIL PENALTY;**
- 5                   **(V) THE MANNER, LOCATION, AND TIME IN WHICH THE**  
6 **CIVIL PENALTY MAY BE PAID;**
- 7                   **(VI) THE CITED PERSON'S RIGHT TO ELECT TO STAND TRIAL**  
8 **FOR THE VIOLATION; AND**
- 9                   **(VII) A WARNING THAT FAILURE TO PAY THE CIVIL PENALTY**  
10 **OR TO CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE**  
11 **CITATION:**

- 12                               **1. IS AN ADMISSION OF LIABILITY; AND**
- 13                               **2. MAY RESULT IN AN ENTRY OF A DEFAULT**  
14 **JUDGMENT THAT MAY INCLUDE THE CIVIL PENALTY, COURT COSTS, AND**  
15 **ADMINISTRATIVE EXPENSES.**

- 16                   **(3) THE COUNTY HEALTH OFFICER SHALL RETAIN A COPY OF THE**  
17 **CITATION.**

18 **16-3A-05.**

- 19                   **(A) (1) A PERSON WHO RECEIVES A CITATION UNDER § 16-3A-04 OF**  
20 **THIS SUBTITLE MAY ELECT TO STAND TRIAL FOR THE OFFENSE BY FILING WITH**  
21 **THE COUNTY HEALTH OFFICER A NOTICE OF INTENTION TO STAND TRIAL.**

- 22                   **(2) THE PERSON ELECTING TO STAND TRIAL UNDER PARAGRAPH**  
23 **(1) OF THIS SUBSECTION SHALL GIVE NOTICE AT LEAST 5 DAYS BEFORE THE**  
24 **DATE SET FORTH IN THE CITATION FOR THE PAYMENT OF THE CIVIL PENALTY.**

- 25                   **(3) AFTER RECEIVING A NOTICE OF INTENTION TO STAND TRIAL**  
26 **FROM A PERSON PROVIDING NOTICE UNDER THIS SUBSECTION, THE COUNTY**  
27 **HEALTH OFFICER SHALL FORWARD THE NOTICE TO THE DISTRICT COURT**  
28 **HAVING VENUE, WITH A COPY OF THE CITATION.**

1           **(B) (1) AFTER RECEIVING THE CITATION AND NOTICE UNDER**  
2 **SUBSECTION (A) OF THIS SECTION, THE DISTRICT COURT SHALL SCHEDULE**  
3 **THE CASE FOR TRIAL AND NOTIFY THE DEFENDANT OF THE TRIAL DATE.**

4           **(2) THE COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE**  
5 **VIOLATION OCCURRED MAY AUTHORIZE THE COUNTY ATTORNEY TO**  
6 **PROSECUTE A CIVIL INFRACTION UNDER THIS SUBTITLE.**

7           **(3) IN A PROCEEDING BEFORE THE DISTRICT COURT, A**  
8 **VIOLATION SHALL BE PROSECUTED IN THE SAME MANNER AND TO THE SAME**  
9 **EXTENT AS A MUNICIPAL INFRACTION UNDER ARTICLE 23A, § 3(B)(7) THROUGH**  
10 **(15) OF THE CODE.**

11           **(C) (1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS**  
12 **COMMITTED A CIVIL INFRACTION UNDER THIS TITLE, THE PERSON SHALL BE**  
13 **LIABLE FOR THE COSTS OF THE COURT PROCEEDINGS.**

14           **(2) ALL PENALTIES AND FORFEITURES COLLECTED BY THE**  
15 **DISTRICT COURT FOR VIOLATIONS OF THIS SUBTITLE SHALL BE REMITTED TO**  
16 **THE COUNTY IN WHICH THE VIOLATION OCCURRED.**

17           SECTION 4. AND BE IT FURTHER ENACTED, That this Act does not  
18 preempt any county or municipal law or ordinance more stringent than this Act.

19           SECTION 5. AND BE IT FURTHER ENACTED, That the provisions of this  
20 Act are intended to be consistent with the federal Family Smoking Prevention and  
21 Control Act and any regulations adopted under the Family Smoking Prevention and  
22 Control Act.

23           SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2010.